In so holding their Lordships have not lost sight of the changes produced by the Medical Act, 1950, in the position of the Medical Disciplinary Committee, as compared with the General Medical Council under the Act of 1858, whereby they are now empowered to compel the attendance of witnesses and the production of documents, to administer oaths, and are required to make rules as to procedure and evidence which have statutory force, and by which a right of appeal from their determination is given. They are, however, not a Court of law but a domestic forum charged in certain cases, of which the present is one, with the peculiar duty of making "due inquiry" into the circumstances attending the conviction in a distant country of a medical practitioner with a view to deciding — of which they alone are the Judges — whether he has been guilty of infamous conduct in a professional respect. This duty they cannot adequately perform unless they are in possession of the whole of the proceedings in the criminal Court in which the conviction occurred. It would be unfortunate if they have precluded themselves from so functioning by the Rules which they have made, and in particular by rule 63. It is not easy to decide whether the whole of the proceedings in Malaya would have been "receivable in a Court of law." No Court of law in this country is charged with precisely the same function as that entrusted to the Committee and the admissibility of documents may depend upon the precise issue before the Court. The record of proceedings is, in their Lordships' opinion, a "document" within the meaning of the second limb of rule 63 (see decisions under the Evidence Act, 1938 — which it may however be noted does not apply to Scotland — in *Edmonds v. Edmonds & Rogers*[2] *Bullock v. Borrett*[3] and *Barkway v. South Wales Transport Co.*[4]). The admissibility of such documents is, however, limited to the statements of fact contained therein, and such a restriction may render the task of the committee and legal assessor extremely difficult in dealing with the record of proceedings in the criminal Court and would exclude the Judge's charge to the jury and other parts of the record which it is clearly desirable that the committee should see.

In the present case the record, with certain excisions, was put in by consent as soon as the committee had quite properly decided that the attendance of the witnesses from Malaya was not practicable and that their absence did not vitiate the proceedings. The consent to the admission of the record is fatal to any objection on this score now being put forward before the Board, nor do their Lordships consider there is any substance in the contentions that the whole of the evidence was not read out in Court or that it was incumbent upon the committee to read portions not considered by either side to have sufficient relevance to require the attention of the committee to be directed thereto.

Their Lordships desire, however, to draw the attention of those concerned to the desirability of an alteration in the Rules of Procedure whereby the committee can be empowered beyond all question to receive in evidence and examine the whole of the officially authenticated proceedings of the convicting Court in this class of case.

For the reasons stated above their Lordships are of opinion that there has in this case been no miscarriage of justice and they have accordingly humbly advised Her Majesty that this appeal should be dismissed.

Appeal dismissed.

Solicitors: *Hempsons; Waterhouse & Co.*

PUBLIC PROSECUTOR v. WEE EH TIANG

[A. Cr. J. (Rigby J.) April 18, 1956]

[K. B. — Criminal Reference No. 1 of 1956]

Criminal trial — Charge — Making false statement — Criminal Procedure Code (Cap. 6), s. 112 — Penal Code s. 193 — Evidence Ordinance, 1950, s. 155.

Criminal Procedure Code (Cap. 6) — Reservation of points of law for consideration of High Court from subordinate Courts in the Malay States — s. 5 of the States Criminal Procedure Code.

The accused in this case was charged, in the alternative, under s. 193 of the Penal Code, with intentionally giving false evidence in that he made two contradictory statements, one of which statements he either knew or believed to be false or did not believe to be true. The particulars of the charge disclosed that in the course of a police investigation under s. 112 of the Criminal Procedure Code (Cap. 6) the accused, in reply to a question put to him by the police investigating officer, stated: "After I saw my daughter Wee Kim Hoon injured in the stomach as a result of a stab, and my daughter told me that her husband Eng Hong stabbed her with a knife." Subsequently, however, at the trial of Eng Hong on a charge of unlawful wounding, the present accused stated in evidence before the Magistrate: "I saw blood on her (meaning Wee Kim Hoon's) stomach. She told me she had been stabbed by someone. She did not tell me who stabbed her." As a result of those contradictory statements the charge under s. 193 of the Penal Code was preferred against the accused. At the trial the accused desired to plead guilty to the charge, but the learned Magistrate declined to accept his plea on the ground that both the accused's statement to the police and his evidence before the trial Court were hearsay and inadmissible in evidence and, accordingly, could not form the basis of a criminal charge against the accused.

Held: the charge as laid down before the learned Magistrate was a valid charge.

Although the Criminal Procedure Code (Cap. 6) does not expressly provide for reservation of questions of law for the consideration of the High Court, as is laid down under s. 317 of the Criminal Procedure Code (Cap. 21), the procedure under that section could be applied in the Malay States by reason of s. 5 of the Criminal Procedure Code (Cap. 6), which provides that the law in force in the Colony shall be applicable where no special provision in relation to Criminal Procedure exists in the Criminal Procedure Code (Cap. 6) itself.

CRIMINAL REFERENCE.

Rigby J. : — The accused in this case was charged, in the alternative, under section 193 of the Penal Code, with intentionally giving false evidence in that he made two contradictory statements, one of which statements he either knew or believed to be false or did not believe to be true.

The particulars of the charge disclose that in the course of a Police investigation under section 112 of the Criminal Procedure Code the accused, in reply to a question put to him by the Police Investigation Officer, stated :—

"After I saw my daughter Wee Kim Hoon injured in the stomach as a result of a stab, and my daughter told me that her husband Eng Hong stabbed her with a knife."

Subsequently, however, at the trial of Eng Hong on a charge of unlawful wounding, the present accused stated in evidence before the Magistrate :—

"I saw blood on her (meaning Wee Kim Hoon's) stomach. She told me she had been stabbed by someone. She did not tell me who stabbed her."

As a result of those contradictory statements the present charge under section 193 of the Penal Code was preferred against the accused. It would appear that at the trial the accused desired to plead guilty to the charge, but the learned Magistrate declined to accept his plea on the ground that both the accused's statement to the Police and his evidence before the trial Court were hearsay and inadmissible in evidence and, accordingly, could not form the basis of a criminal charge against the accused.

Since the learned Deputy Public Prosecutor disagreed with the President's view, the President adjourned the case and referred the point of law involved for the determination of this Court.

Although there is statutory provision for the High Court, after conviction recorded, to reserve a point of law for the decision and determination of the Court of Appeal, I have had some doubt as to whether any provision exists for a Subordinate Court in the Federation, in the exercise of its criminal jurisdiction, to refer a point of law for the decision of the High Court. However, section 5 of the Criminal Procedure Code provides that the law relating to criminal procedure for the time being in force in the Colony shall be applicable in cases where no special provision in relation to criminal procedure exists in the Code itself.

Section 317 of the Criminal Procedure Code of the Colony provides that a Subordinate Court "may, if it thinks fit, at the conclusion of the proceedings or at any time within seven days from the time of the judgment ..... or order passed or made therein, reserve for the consideration of the High Court any question of law arising in such proceedings, ...". Section 318 deals with the powers of the High Court on a consideration of such questions of law referred to it by the Magistrate under section 317.

I am, therefore, of the opinion that this Court can properly entertain at this stage the point of law on which its opinion is sought.

On the charge as preferred against the accused, the only issue to be decided was as to whether or not he had intentionally given false evidence in that he had made two contradictory statements, one of which statements he either know or believed to be false or did not believe to be true. In my view — and for the reasons I am about to state — the particulars of the charge as laid were perfectly valid and the learned President, assuming that he was satisfied that the accused fully understood the nature of the charge and the consequences of his plea, ought to have accepted and recorded that plea.

Dealing first with the evidence given by the accused before the Magistrate, to wit,

"I saw blood on her (meaning Wee Kim Hoon's) stomach. She told me she had been stabbed by someone. She did not tell me who stabbed her."

the first sentence "I saw blood ....." was clearly relevant and admissible. The second sentence (Wee Kim Hoon herself having stated previously at the trial that she did not know who stabbed her) was hearsay and inadmissible and ought not to have been recorded by the learned Magistrate. The prosecution, however, was clearly entitled to ask — and as is apparent from the record, did ask — the witness :—

"Did she (i.e. the complainant) tell you who stabbed her?"

If the reply to that question was in the negative — and the evidence shows that it was — the prosecution, having regard to the statement made by the witness to the Police in the course of the investigation, would be entitled to have recourse to the provisions of section 113 (ii) of the Criminal Procedure Code, *not* with the object of making use of the witness's statement to the

Police against the accused Eng Hong, but *solely* for the purpose of impeaching the credit or credibility of the witness himself.

Section 155 of the Evidence Ordinance makes it clear that the credit of a witness may be impeached, with the consent of the Court, by the party who called such witness "by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted."

The learned President, in his reference to this Court giving the reasons for his decision, has stated that even if the witness — i.e. the present accused — had told the Magistrate that his daughter had told him who stabbed her, the witness would not have been permitted to continue and say that she had told him that it was her husband Eng Hong, since such evidence would have been hearsay and inadmissible. That, of course, is perfectly true. But what the witness — i.e. the present accused — did say was "She did not tell me who stabbed her". That, on the face of it, was directly contradictory to the previous statement the witness had made to the Police and, as such — with the consent of the Court, and only with such consent — the prosecution was entitled to put to him his earlier statement with the object of impeaching his credit.

The learned President, in giving the reasons for his decision, has stated that the part of the statement made by the witness — i.e. the accused — was inadmissible because it consisted of hearsay evidence against the man then standing trial, i.e. the husband Eng Hong. With respect to the Magistrate, therein appears to be the fundamental fallacy of his reasoning. The statement made by the witness to the Police *could only be used* for the purpose of impeaching the witness's own credit; it clearly *could not be used* as evidence against the husband Eng Hong. The only value and effect of impeaching the credit of a witness by the production to him of an earlier and contradictory statement made by him is to render his sworn evidence valueless. The earlier, and unsworn, statement cannot be used as an alternative to, or in substitution for, his sworn testimony. (See *Mallal's* Criminal Procedure, 3rd Edition, pp. 138 — 9).

For these reasons I am of the opinion that the charge as laid before the learned President was a valid charge, and I accordingly direct that the case be remitted to him to hear and record the plea of the accused to that charge as laid.

Order accordingly

MARSHALL v. MARSHALL

[O. C. J. (Taylor J.) June 21, 1954]

[Singapore — Divorce No. 34 of 1953]

Divorce — Jurisdiction — Acquisition of domicil of choice.

To establish a domicil of choice it is necessary to adduce clear proof of two separate and independent facts, one concrete or physical and the other abstract or psychological. There must be actual residence for an indefinite period and there must also be an intention to remain so firm and positive as to exclude any intention to make an ultimate home in another jurisdiction.

DIVORCE, Trial of issue on Domicile.

J. L. P. Harris for the petitioner.

M. W. Maxwell for the respondent.

The facts appear sufficiently from the judgment:

Taylor J. : — In this divorce suit the question of domicile was tried as a preliminary issue.

Both parties are English and admittedly their domicil of origin was in England. The husband claims to have acquired a domicil of choice in Singapore. The question is whether he has established himself here in the sense of a man who has not only quitted his country of origin but has also settled in a new country. There must be not only a physical settlement but also a settled state of mind, an *animus manendi.*

The burden of proof on the party alleging this is specially heavy and is also difficult because the fact to be proved is the intention either of a man who has died or of a living man whose declarations are suspect because they are *post litem motam.* No particular fact is decisive. There is no generally applicable test. A fact such as buying a house is highly significant in one case but unimportant in other circumstances. The question can be answered only on a critical review of all the circumstances of the man's life up to the material date.

The husband in this case is by birth a Londoner and by profession an analytical chemist. During the war he worked as a scientist for the Home Government. Then he started a chemical manufacturing business at Chesterfield. This still exists but did not prosper to his satisfaction. He could have obtained salaried work in England but for years he had been hankering to go abroad so, after considering available vacancies in Egypt and Australia, he finally accepted Crown Agent's appointment and came to Singapore.

He sold his house at Chesterfield but anyone who was going abroad for a number of years would do that. It has no more significance than the sale of his car. It was suggested that he resolved at that time not again to reside permanently in England. I do not accept that suggestion but in any event such a resolve would